

1 The Honorable Marsha J. Pechman
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JULIE DALESSIO, an individual,
Plaintiff,
v.
UNIVERSITY OF WASHINGTON,
Defendant.

No. 2:17-cv-00642-MJP

PLAINTIFF'S MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT AND
MEMORANDUM OF LAW IN SUPPORT

NOTE ON MOTION CALENDAR

Friday, March 30, 2018

Oral argument requested

I. Introduction

Plaintiff Julie Dalessio (“Dalessio”) respectfully moves this Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure, for leave to file an AMENDED COMPLAINT, a copy of which is attached hereto. The new complaint crystallizes the issues from Dalessio’s original complaint, but accounts for the significant factual developments that have occurred since the original complaint was filed especially the re-publication of Dalessio’s private and confidential information to the PACER CM/ECF system for the general public’s consumption. On February

Motion

Case 2:17-cv-00642

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1 22, 2018, Plaintiff and Defendant met and conferred. As of the time of this filing, on March 12,
 2 2018, Defendants had not consented to this filing. Accordingly, Plaintiff seeks the Court's leave
 3 to amend, which should be granted for the reasons set forth below.

4 **II. Statement of Fact**

5 Dalessio filed the original complaint in King County Superior Court on or about March
 6 2017 as a pro se litigant. Defendant UW then removed this action to the United States District
 7 Court for the Western District of Washington.

8 On December 08, 2017, Dalessio requested this Court to appoint pro bono counsel
 9 because she is unable to afford counsel, and due to her disability that prohibited her from
 10 attending court proceedings.

11 On December 12, 2017, docket 65, this Court granted Dalessio's motion for the
 12 appointment of counsel based upon "exceptional circumstances. . . in light of the complexity of
 13 the legal issues involved." In this Court's written ruling, docket 65, it found Dalessio articulated
 14 colorable claims of law.

15 **III. Argument**

16 **Plaintiff has Met the Standard for Obtaining Leave to File an Amended
 17 Complaint under Federal Rules of Civil Procedure 15**

18 Pursuant to the Federal Rules of Civil Procedure 15(a)(2), "a party may amend its
 19 pleading only with the opposing party's written consent or the court's leave. The court should
 20 freely give leave when justice so requires." The courts in the Ninth Circuit apply "this policy is
 21 to be applied with extreme liberality." *Cf Ex Rel. Farnan v. Capistrano Unified School*, 654 F. 3d
 22 975, 985 (9th Cir. 2011). "[T]he rule favoring liberality in amendments to pleadings is
 23 particularly important for the pro se litigant. Presumably unskilled in the law, the pro se litigant is
 24 far more prone to make errors in pleading than the person who benefits from the representation of
 25 counsel." *Crowley v. Bannister*, 734 F. 3d 967, 977-78 (9th Cir. 2013) (internal quotation marks
 26 omitted). "[T]here exists a *presumption* under Rule 15(a) in favor of granting leave to amend."
 27 *Farnan*, 654 F. 3d at 985 (emphasis in original).

28 In light of pro bono counsel being appointed, and the significant factual developments

1 since Dalessio originally filed suit on or about March 2017, good cause for amending the
 2 Complaint is immediately apparent. Justice requires this complaint to be amended, so Dalessio
 3 could draft a complaint with the aid of an attorney, and also plead the intervening factual events
 4 that gave rise to additional causes of action, arising out of her initial claim. Consistent with the
 5 liberal standard that applies to motions to amend under Rule 15(a)(2), this Court should therefore
 6 grant Dalessio's motion.

7 Three pivotal events have transpired since Dalessio filed her original complaint in King
 8 County Superior Court on or about March 2017. First, Defendant UW removed this case to
 9 federal court where there are different pleading standards. Federal courts use a stricter pleading
 10 standard than Washington State court do, which would be unfair to Dalessio if she were unable to
 11 amend her Complaint to meet the stricter federal pleading standards. *McCurry v. Chevy Chase*
 12 *Bank, FSB*, 233 P. 3d 861, 863 (Wash. 2010) (stating federal courts use “*plausibly* based upon the
 13 factual allegations in the complaint — a more difficult standard to satisfy”). Second, Dalessio
 14 was appointed pro bono counsel in January 2018, and allowing leave for Dalessio to amend the
 15 complaint with her pro bono counsel, would allow her to reap the benefits from the representation
 16 of counsel. Third, there are intervening facts and causes of action that arise out of the events
 17 from the original complaint. It would be a waste of Dalessio's and the court's resources for
 18 Dalessio to file another lawsuit about these intervening facts and causes of action.

19 The newly-alleged facts were entirely unknown – and, in fact, not in existence – at the
 20 time Dalessio filed her original complaint. Plaintiff is not seeking the amendment in bad faith or
 21 with a dilatory motive.

22 The interests of justice and judicial economy will undoubtedly be served by having all
 23 allegations properly before the Court as set for in Dalessio's proposed amended complaint.

24 Finally, Dalessio's request to file an amended complaint is not futile as this Court already
 25 articulated that Dalessio raised colorable claims in her original complaint.

26 Accordingly, in the interests of justice, this Court should grant Plaintiff's motion for leave
 27 to file the proposed amended complaint.

IV. Conclusion

For the reasons identified above, Dalessio requests that the Court grant Plaintiff's motion for leave to file the proposed amended complaint.

Respectfully submitted this 12th day of March, 2018

Law Office of Joseph Thomas

/s/ Joseph Thomas
Joseph Thomas, WSBA 49532

Certificate of Service

I hereby certify that on 12th of March, 2018, I filed the foregoing with the Clerk of the Court through the CM/ECF system which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Electronic Email Notice List.

/s/ Joseph Thomas
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